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WITHDRAWAL SHEET

Ronald Reagan Library

Collection: STEPHENS, JAY B.: Files

Archivist: ggc/srj

File Folder: AIDS Commission Briefing National Institute of Health
7/23/87 OA 15669

Date: 9/18/97

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Memo (OA15669)	Arnold Intrater to Peter Wallison re First class travel for special review board members, (2p, partial)	12/1/86	P5
2. Memo	Peter Keisler to Arthur Culvahouse re proposed Executive Order, (p2, whole)	5/29/87	P5 CCB 12/28/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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ACCEPT Tentative REGRET _____

The Commissioners
of the
Presidential Commission
on the
Human Immunodeficiency Virus Epidemic
request the pleasure of your company
at a reception
on Wednesday, the ninth of September
from seven to nine o'clock
Salon One
J.W. Marriott Hotel
1331 Pennsylvania Avenue, Northwest
Washington, D.C.

R.S.V.P. 245-7000
No Host Bar

Present this card
for admittance

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D. C. 20201
OFFICIAL BUSINESS

WHITE HOUSE MAIL
RECEPTION SECURITY
1987 SEP -8 11:46

Jay B. Stephens
Deputy Counsel to the President
The White House

Interater Draft
7-23-87

AIDS
Committee

Legal issues relating
to work of Comm'n.

TALKING POINTS

July 22, 1987

- A. The government is the most regulated industry you will ever be involved with - be patient, we do sort things out pretty well in the end.

You HAVE A PRELIMINARY REPORT DUE IN 90 DAYS.

- B. Become familiar with the Executive Order. The Executive Order articulates what areas of advice the President wants you to cover but also acts as a limitation on the scope of your inquiry. An Advisory Committee responsibility is to furnish advice as a group and stick to the mission as articulated in the charter.

- C. You may engage in preparatory sessions but cannot have a formal meeting until a Committee Charter is filed with the GSA. HHS will do that for you, perhaps even as we speak.

Until you have a charter you are not meeting, you are getting organized and oriented and you may even gather data or information, but you do not meet.

"Meetings" of Advisory Committee are open to the public. Unless closed for reasons such as: the meeting will cover confidential information or matters affecting personal privacy.

- D. If meeting with Federal Agency Officials, keep in mind you are gathering information and facts - you are not "advising" the agency.
- E. Be discrete about the data you handle - be sensitive to the personal privacy of AIDS victims.
- F. Fill out the Personal Data Statement
- it is confidential and necessary
- it will be reviewed by White House Counsel so that there are no surprises for you or for us.
- G. Financial Interests - conflicts of interests

- PDS
- Conflicts / Appointments (278) - private sector
- Legal counsel
- Public scrutiny
- FOIA

- H. Your work will be subject to intense public scrutiny
 - FOIA requests - much of your work will probably be made available although there are legal bases for protecting some of the material you develop (i.e. personal privacy).
 - When you write, recognize that what you write may end up becoming public.
- I. Government travel/per diem are adequate but not generous. Do not make expenditures and assume you will be compensated. (I assume an administrative official will be giving you advice on the specifics of travel reimbursements.)
- J. As a Presidential appointee to a significant Commission, you are subject to being quoted and misquoted, so be careful.
- K. OGE pamphlet on Ethical Behavior - gives you a flavor of the limitations to Federal employees - they do not all apply to you (e.g. you are not subject to the limitations on outside employment).
- L. Post Employment Restrictions - (you should not touch this one - suggest that this will be covered more fully by HHS staff assigned to the Commission).

*

You may have to do a small dance around the issue of FOIA if we want to preserve some argument about non-access to the report because it becomes a Presidential Record.

For Immediate Release

June 25, 1987

EXECUTIVE ORDER

- - - - -

PRESIDENTIAL COMMISSION ON THE
HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to create an advisory commission to investigate the spread of the human immunodeficiency virus (HIV) and the resultant acquired immune deficiency syndrome (AIDS) in the United States, it is hereby ordered as follows:

(13) Section 1. Establishment. (a) There is established the Presidential Commission on the Human Immunodeficiency Virus Epidemic to investigate the spread of the HIV and the resultant AIDS. The Commission shall be composed of 11 members appointed or designated by the President. The members shall be distinguished individuals who have experience in such relevant disciplines as medicine, epidemiology, virology, law, insurance, education, and public health.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall advise the President, the Secretary of Health and Human Services, and other relevant Cabinet heads on the public health dangers including the medical, legal, ethical, social, and economic impact, from the spread of the HIV and resulting illnesses including AIDS, AIDS-related complex, and other related conditions.

(b) The primary focus of the Commission shall be to recommend measures that Federal, State, and local officials can take to (1) protect the public from contracting the HIV; (2) assist in finding a cure for AIDS; and (3) care for those who already have the disease.

(c) In particular, the Commission shall (1) evaluate efforts by educational institutions and other public and private entities to provide education and information concerning AIDS; (2) analyze the efforts currently underway by Federal, State, and local authorities to combat AIDS; (3) examine long-term impact of AIDS treatment needs on the health care delivery system, including the effect on non-AIDS patients in need of medical care; (4) review the United States history of dealing with communicable disease epidemics; (5) evaluate research activities relating to the prevention and treatment of AIDS; (6) identify future areas of research that might be needed to address the AIDS epidemic; (7) examine policies for development and release of drugs and vaccines to combat AIDS; (8) assess the progression of AIDS among the general population and among specific risk groups; (9) study legal and ethical issues relating to AIDS; and (10) review the role of the United States in the international AIDS pandemic.

more

(OVER)

(d) The Commission shall make a preliminary report to the President not later than 90 days after the date the members of the Commission are first appointed or designated. The Commission shall submit its final report no later than 1 year from the date of this Order.

Sec. 3. Administration. (a) The heads of Executive departments and agencies, to the extent permitted by law, shall provide the Commission, upon request, with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission may receive compensation for their work on the Commission at the daily rate specified for GS-18 of the General Schedule. While engaged in the work of the Commission, members appointed from among private citizens of the United States, to the extent funds are available, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) The Office of the Secretary of Health and Human Services, subject to the availability of appropriations, shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions. The heads of other Executive departments and agencies, to the extent permitted by law, shall cooperate with the Commission and provide such personnel and administrative support as may be necessary for the performance of its functions.

Sec. 4. General Provisions. (a) The functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of Health and Human Services, in accordance with guidelines and procedures established by the Administrator of General Services.

Daryl
Ginsler
475-0150

(b) The Commission, unless sooner extended, shall terminate 30 days after submitting its final report to the President.

RONALD REAGAN

THE WHITE HOUSE,

June 24, 1987.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 25, 1987

The President today announced his intention to appoint W. Eugene Mayberry to be a Member of the Presidential Commission on the Human Immunodeficiency Virus Epidemic. Upon appointment, he will be designated as Chairman.

Dr. Mayberry is currently Chief Executive Officer of the Mayo Foundation in Rochester, Minnesota, (1986 - present), and is Chairman of the Board of Governors of the Mayo Clinic, (1976 - present). Since 1971, Dr. Mayberry has served on the Mayo Foundation Board of Trustees. He has been a consultant in various positions at the Mayo Clinic since 1960. Dr. Mayberry is a specialist in endocrinology.

Dr. Mayberry graduated from the University of Tennessee, (M.D., 1953), and the University of Minnesota, (M.S., 1959). He was born August 22, 1929 in Cookeville, Tennessee. Dr. Mayberry is married, has two children and resides in Rochester, Minnesota.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 23, 1987

The President today announced his intention to appoint of the following individuals to be Members of the Presidential Commission on the Human Immunodeficiency Virus Epidemic:

WILLIAM B. WALSH, of Maryland. Dr. Walsh founded Project HOPE (Health Opportunity for People Everywhere) in 1958, and has been President and Medical Director since. He is also currently a clinical professor of internal medicine at Georgetown University. Dr. Walsh earned his B.S. degree in 1940 from St. John's University in New York, and his M.D. degree from the Georgetown University School of Medicine in 1943. Dr. Walsh served in the United States Navy, 1941-1954. He received the Presidential Medal of Freedom in June, 1987, and received the National Institute of Social Sciences, Gold Medal in 1977. Dr. Walsh was born April 26, 1920, in Brooklyn, New York. He is married, has three sons and resides in Bethesda, Maryland.

Dr. Walsh will serve as a representative of the International Community.

ADMIRAL JAMES D. WATKINS, U.S. Navy, Retired, of California. Admiral Watkins served as the Chief of Naval Operations, U.S. Navy, 1982-1986. Prior to this, he was Commander and Chief of the U.S. Pacific Fleet, 1981-1982. He is a 1949 graduate of the U.S. Naval Academy and received his Masters Degree from the Naval Postgraduate School in 1958. During his military service, Admiral Watkins received several Distinguished Service Medals including three Legions of Merit and the Bronze Star. Admiral Watkins was born March 7, 1927 in Alhambra, California. He is married, has six children and resides in the District of Columbia.

Admiral Watkins will serve as a representative of the Military Community.

JOHN CARDINAL O'CONNOR, of New York. Cardinal O'Connor was ordained as a priest in 1945. He was named Archbishop of New York in 1984, and Cardinal in 1985. He was Bishop of Scranton, Pennsylvania in 1983. He served in the United States Navy, 1952-1979, and was appointed Navy Chief of Chaplains in 1974, and Titular Bishop of Cursola and Auxiliary to the Military Vicar in 1979. Cardinal O'Connor was born January 15, 1920 in Philadelphia, Pennsylvania. He currently resides in New York, New York.

Cardinal O'Connor will serve as a representative of the Religious Community.

FRANK LILLY, of New York. Since 1976, Dr. Lilly has been Chairman of the Genetics Department of the Albert Einstein Medical Center in New York City. He also serves concurrently as a Professor of Genetics for the Albert Einstein College of Medicine, 1974 - present. Dr. Lilly earned his B.S. degree from the West Virginia University in 1951. He earned his first Ph.D. degree from the University of Paris in 1958 majoring in organic chemistry; and his second Ph.D. degree from the Cornell Graduate School of Medical Sciences in 1965 majoring in biology. Dr. Lilly served in the United States Army from January 1952 - December 1953. He was born August 28, 1930 in Charleston, West Virginia and resides in New York.

Dr. Lilly will serve as a representative of the Scientific Community.

JOHN J. CREEDON, of Connecticut. Mr. Creedon has been with the Metropolitan Life Insurance Company in New York City since 1942. He has been serving as President of the company since 1980, and Chief Executive Officer since 1983. He is also Chairman of the Business Roundtable's Task Force on Health and Welfare Benefit Plans. Mr. Creedon is serving as General Chairman of the Greater New York Blood Program Campaign for 1986 and 1987. He earned his B.S. degree in 1952 in the undergraduate program at New York University. Mr. Creedon then attended the New York University Law School and earned his LL.B. degree in 1955 and his LL.M. degree in 1962. He served in the United States Navy during World War II. Mr. Creedon was born August 1, 1924 in New York City. He is married and has six children and resides in New Canaan, Connecticut.

Mr. Creedon will serve as a representative of the Insurance and Business Community and the Legal Community.

BURTON JAMES LEE III, of Connecticut. Since 1969, Dr. Lee has been a practicing physician at the Memorial Sloan-Kettering Cancer Center in New York specializing in the diagnosis and treatment of lymphomas, the most common cancers affecting people with AIDS. He was President of the General Medical Staff at the Memorial Sloan-Kettering Hospital from 1972 through 1974 and from 1983 through 1985. Dr. Burton earned his B.A. from Yale University in 1952 and his M.D. from the Columbia University College of Physicians and Surgeons in 1956. He was born March 28, 1930 in New York City. Dr. Burton is married, has three children and resides in Greenwich, Connecticut.

He will serve as a Representative of the Community of Practicing Physicians.

WOODROW A. MYERS, JR., of Indiana. Dr. Myers is the Health Commissioner for the State of Indiana, and also serves as the Secretary of the Indiana State Board of Health. He has served in both of these positions since 1985. Previously, he was the Physician Health Advisor for the United States Senate Committee on Labor and Human Resources in Washington D.C., August 1984 - December 1984. Dr. Myers earned his B.S. degree from Stanford University in 1973 for which he received honors in Biological Studies. He earned his M.D. degree from Harvard Medical School in 1977 and his M.B.A. degree from Stanford University Graduate School of Business in 1982.

Dr. Myers was born February 14, 1954 in Indiana. He is married, has two children and resides in Indianapolis, Indiana.

Dr. Myers will serve as a representative of the Public Health Community.

PENNY PULLEN, of Illinois. Miss Pullen was first elected to the Illinois State House of Representatives in 1976, and has been serving in the State House since that time. In January 1987 she was appointed House Minority Leader. Miss Pullen earned her B.A. degree from the University of Illinois at Chicago in 1969. She is the author of an AIDS bill which has passed overwhelmingly on what the states should be doing regarding AIDS. Miss Pullen resides in Illinois.

Miss Pullen will serve as the representative of the Community of State and Local Governments.

COLLEEN CONWAY-WELCH, of Tennessee. Since 1984, Dr. Conway-Welch has been a Professor and the Dean of Nursing at Vanderbilt University and Associate Director of the Vanderbilt University Hospital Department of Nursing. She received her B.S.N. degree from the Georgetown University School of Nursing in 1965; her M.S.N. degree from the Catholic University of America in 1969; her C.N.M. degree from the Catholic Maternity Institute in 1969; and her Ph.D. degree from New York University in 1973. Dr. Conway-Welch was born April 26, 1944 in Iowa. She is married and resides in Nashville, Tennessee.

Dr. Conway-Welch will serve as a representative of the Nursing Community.

THERESA L. CRENSHAW, of California. Dr. Crenshaw is the Director of The Crenshaw Clinic, which specializes in the evaluation and treatment of sexual dysfunction, sexual medicine and human relationships. She also serves as President of the American Association of Sex Educators, Counselors and Therapists. Dr. Crenshaw received her B.A. degree from Stanford University in 1964 and her M.D. degree from the University of California at Irvine in 1969. She served in the United States Navy from 1967 through 1973. Dr. Crenshaw resides in California.

THE WHITE HOUSE

-4-
WASHINGTON

Dr. Crenshaw will serve as a representative of the Medical Community.

CORY SERVAAS, of Indiana. Since 1973, Dr. SerVaas has served as Editor and Publisher of The Saturday Evening Post. She also serves as President and Research Director of the Benjamin Franklin Library and Medical Society and Medical Director of the Foundation for Preventative Medicine, 1976 - present. Dr. SerVaas earned her A.B. degree from the University of Iowa School of Journalism in 1946 and did post-graduate work at Columbia University. She earned her M.D. degree from the Indiana University School of Medicine in 1969. Dr. SerVaas was born June 21, 1924 in Pella, Iowa. She is married, has five children and resides in Indianapolis, Indiana.

Dr. SerVaas will serve as a representative of the Publishing and Medical Communities.

RICHARD M. De VOS, Michigan. Mr. De Vos co-founded Amway Corporation in 1959, and has since been serving as President of the corporation. Mr. De Vos attended the Calvin College in Michigan. He was born March 4, 1926 in Michigan. Mr. De Vos served in the United States Air Force from 1944 through 1946. He is married, has four children and resides in Grand Rapids, Michigan.

Mr. De Vos will serve as a representative of the Business Community.

#

REQUIREMENTS UNDER THE FACA

1. FUNCTION SHOULD BE ADVISORY ONLY
§2
2. §5
 1. clearly defined purpose
 2. fairly balanced in terms of points of view represented and functions performed
 3. the advice and recommendations should not be inappropriately influenced by the appointing authority or any special interest
 4. provision for appropriations, duration, submission of reports and their publication
 5. staff, quarters, funding
3. §6 Presidential reporting requirements
4. §7
 - (a) GSA - Committee Management Secretariat responsible for all advisory committees
 - (c) GSA guidelines on advisory committees INTERIM RULES
48 Fed. Reg. 19324 (April 28, 1983)
Regs cover:
 - rate of pay of advisory committee members
 - per diem travel expenses
 - services for handicapped members
5. Agency requirements §8
 - (a) Each agency should have advisory committee guidelines
 - (b) Each agency should have an advisory committee Management Officer who:
 - has control over procedures to establish and supervise the advisory committee
 - assemble and maintain papers of committee
 - process FOIA requests

6. §9 Establishment of advisory committee

- (c) No advisory committee can meet until Charter filed with Administration of GSA (in case of Presidential Advisory Commission) or head of agency to whom the advisory committee reports and Congressional Commission with jurisdiction).

Charter also must be filed with Library of Congress.

7. §10 Advisory committee procedures

- (a) all meetings open to the public
- (b) notice of all meetings in Federal Register
- (c) other types of public notice should be provided
- (d) interested persons should be permitted to attend, appear before or file statements with the committee
- (e) subject to FOIA, the records reports transcripts, minutes, appendixes, working papers, drafts, studies, agendas or other documents "made available to or prepared for or by each advisory committee" shall be made available for public inspection at a single location until the committee ceases to exist.
- (f) detailed minutes kept, Chairman has to certify minutes accuracy
- (g) Head of agency, to which advisory committee reports or the President may close a meeting in accordance with the Sunshine Act. Any determination should be in writing and contain the reasons. If meetings are closed, the committee must issue a report at least annually summarizing its activities.
- (h) Designated Federal Officer "employee of Federal government" to "chair or attend" each meeting.
 - When he decides it is in the public interest he can adjourn a meeting
 - He has to approve the calling of a meeting

8. §11 Transcripts of meetings have to be made available to the public at cost of duplication.
9. §12 Agency must keep records of funds spent on advisory committee.
 - ° Provide support services to the committee
10. §13 Report of advisory committee and background papers prepared by Constituents shall be filed with the Library of Congress.

Interim Regs on Advisory Committees

What is a meeting - "informed meetings or gatherings of advisory committee members on which substantive committee business is discussed are subject to the Act." But - meetings of two or more members to gather information or conduct research, to analyze facts or to draft option papers does not constitute an advisory committee.

101-6.1007 For an established advisory committee or a subcommittee, the agency head must

- (a) file charter
- (b) issue agency regs or guidelines as may be necessary to operate and oversee the advisory committee
- (c) publish required Federal Register notices
- (d) designate a Committee Management Officer for agency
- * (e) appoint a Designated Federal Official for each advisory committee
- (f) ensure opportunity for public participation
- (g) ensure detailed minutes

*some others not applicable

101-6.1011 Chairperson of independent Presidential Advisory Committee

NOT WHAT WE HAVE HERE

101-6.1013 Presidential Advisory Committee - Charter filed with Secretariat of GSA and Library of Congress

101-6.1015 Federal Register requirements

Notice of meeting 15 days before the meeting. In exceptional circumstances - less than 15 days if reasons given.

Filed by agency head

- name of committee
- time, date, place, and purpose
- summary of agenda
- open or closed? If closed, reasons why and exemptions

101-6.1017 Duties of agency committee Management Officer

- carry out §8(b) of FACA
- maintain charters and member lists for advisory committee's of the agency and other information
- provide information on how to obtain copies of minutes of meetings and reports of advisory committee

101-6.1019 Duties of Designated Federal Official

- attend meetings
- adjourn meetings when in public interest

101-6.1021 Public participation

- meetings must be held at reasonable time and accessible place
- room must be big enough for interested members of the public
- any member of the public can speak if agency regulations or guidelines so permit

101-6.1023 To close a meeting

- 30 days in advance, a member or agent of the committee must submit to agency head a request to close - citing the provisions of 552b. 30 days may be waived or lessened by the agency head if requested and justified.
- Agency General Counsel must review the request
- The agency head must issue a determination that all or part of a meeting may be closed to be available to the public

- ° Agency head must publish a meeting notice in the Federal Register with Sunshine reasons

101-6.1025 Minutes

- ° date, time, place
- ° list of all persons present
- ° describe matters discussed and resolution
- ° copies of documents received or issued

101-6.1029 Specific renewal requirements at least 30 days before termination

101-6.1033 Compensation

- ° committee members not compensated
- ° consultants may be appointed
 - 1) if not otherwise available without cost to the agency -- rate of compensation 5 U.S.C. 3109
OMB Circular A-120
- ° staff - paid according to 5 U.S.C. Chapter 51 up to the maximum rate for GS-15 unless staff member would be placed at a grade higher than is under 5 U.S.C. Chapter 51
- ° special rules for staff members who are Federal Officials
- ° travel expenses - 5 U.S.C. 5703
- ° handicapped members may have special assistances

101-6.1035 Reporting requirements to GSA

FACA CASELAW

NATIONAL ANTI HUNGER COALITION

FACTS Task forces performed information gatherings, performed studies, draft reports and recommendations.

Executive committee reviewed draft reports and made final recommendations

HOLDING Balanced membership based on functions to be performed

Staff not subject to FACA where it did not provide advice directly to the President or any agency. Staff reports were not just rubber stamped by the advisory committee.

NATIONAL NUTRITIONAL FOOD ASSOCIATION

Held adhoc meetings of food experts with FDA re: warnings for protein supplements in weight loss even covered by FACA because FDA relied on their advice. Relief discussed page 336 - its do not invalidate agency action based advisory committee advice

FOOD CHEM NEWS

Two informal meetings of BATF with consumer - distilled spirits industry reports were meetings of advisory committee utilized by BATF to obtain recommendations. Relief enjoined convening of future meetings unless FACA complied with.

CENTER FOR AUTO SAFETY V. TIEMANN

Organization of state jury officials meeting with DOT officials was an advisory committee (to advise an issuance of meetings) any person seeking documents under FACA has _____ to sue under it. Relief - agency regs promulgated with advice of the advisory committee will not be set aside. Only a prospective injury and _____ - relief re: conduct under FACA

CONSUMERS UNION

FDA meetings with representatives of cosmetics industry not an advisory committee - purpose to _____ industry's voluntary program to test ingredients

CENTER FOR AUTO SAFETY V. COX

Order was held too broad - only meetings for advice and recommendations are covered by FACA. An appeal: Relief - agency regs promulgated with advice of the advisory committee will not be set aside. Only a prospective injury and _____ relief re: conduct under FACA

LOMBARDO

The Commission on Motor Vehicle Emissions of National Academy of Sciences (CMVE) not an advisory committee of the EPA CMVE had contractual relations with GPA to provide

SUNSHINE ACT

MEETING - deliberation of at least the no of individuals required to take action on behalf of the agency where such deliberations determine or result in the disposition of agency business.

CLOSING PERMISSIBLE IF: SUBSECTION (c)

- ° E.O. requires classification or closure in the interest of national security or foreign policy
- ° matters related solely to internal personnel rules and practice of the agency
- ° matters exempt from disclosure by statute
- ° trade secrets and commercial or financial information obtained from a person and privileged or confidential
- ° involving accusing any person of a crime or formally ensuring any person
- ° personal information disclosure of which would involve clearly unwarranted invasion of privacy
- ° investigating records compiled for law enforcement purposes if release would interfere with enforcement proceedings invade privacy, rural confide source, disclose investigatory techniques
- ° banking exam records
- ° disclosure information the premature disclosure of which would:
 - a) lead to financial speculation or endanger a financial institution
 - b) in the case of an agency, be likely to significantly frustrate implementation of a proposed agency action.
- ° concern the agency's issuance of a subpoena or participation in a civil action, or formal agency adjudication or otherwise involve a determination after a hearing.

PROCEDURES

d(1)-(4) apply to agencies

e(1) announcements of meetings one week in advance or at earliest practicable time

(2) changes in time and place can be made if agency announces at earliest practicable time

(3) notice in Federal Register to be made immediately after public announcement: time, place, subject, open or closed, any change, name and number of official to call regarding meetings

- f
 - ° procedures for closed meetings - the General Counsel must certify that in his opinion the meeting must be closed and shall state each relevant exemption
 - ° a copy must be kept by the agency
 - ° transcript of meeting must be made and kept and copy of all documents considered
 - ° transcript should be made available to the public except for exempt portion and available to public at cost of duplication
 - ° transcript should be kept for two years

- h
 - ° jurisdiction in Federal court for violations sent must be brought no later than 60 days after meeting announced, or held. Relief can be:
 - 1) future violations
 - 2) production of transcript agency action taken at meeting may not be invalidated

- j
 - ° reporting requirements to Congress open and closed meetings.

CASELAW

MEETINGS COVERED BY THE SUNSHINE ACT

ITT conferences to exchange ideas and attended by members but where no deliberations on matters within agency's formal authority were not covered by Act. See also Rockford, C&S, Philadelphia Newspapers

ITT act only applies to subdivision meetings that are _____ by and subject to control of the full agency.

HUNT V. NLC act covers subdivisions of an agency only if composed of members of the agency (must be appointed by the President)

COMMUNICATIONS SYSTEMS agency members can act on routine business circulated to than in writing without a meeting

SHOWMAKER no requirement that meeting be conducted in any manner as long as requirements of Act are met.

TWA V. NMB act does not require an agency to transact business routinely conducted through staff initiative with advice from agency members, through meetings under the Act. Cf Pacific Legal Found V. CEQ

C & S MOTOR FREIGHT meetings between an agency member and his personnel staff and or attorneys not covered.

COMMON CAUSE voting by sequential, notations O.K.

EXEMPTIONS

COMMON CAUSE

- Sunshine Act provides no basis for closing budget meetings
- no should for intra-agency deliberations
 - exemptions construed narrowly
 - exemption 2 - matters of public interest cannot be shielded
 - exemption 6 - not intended to shelter substandard performance by government executives.

TENNECO - ex 7

GRAPNET - ex 10 judicial and administrative proceedings included

CLARK COWLITZ ex 10 applies after litigation is over

PHILADELPHIA NEWS

REMEDIES

PAN AM remedy for improperly closing a meeting is to release the transcript

TENNECO procedural violations covered by FERC when it amended its procedures prospectively

AG BECKER where no advance notice of closed meeting given but meeting was properly closed, decl. relief was only proper relief

FACA CASES

Anation Consumer Action (b) (S) to close meeting prior to passage of Sunshine Act

GATES no right of public participation

INTERPRETIVE GUIDE TO SUNSHINE ACT

MEETING - must be a quorum - number of members necessary to take action. If statute unclear, then a majority.

- ° same goes for subdivision
- ° not where one gives a speech and others are in the audience
- ° conference calls could conceivably qualify
- ° some substance must be discussed
- ° chance encounters no
- ° lunch together no
- ° but does include the conduct as well as disposition of official agency matters the whole decision making forces must be open to public scrutiny
- ° briefings, exploratory, tentative discussions may not be meetings

ONE TEST

- ° Does the discussion predetermine official agency action?

ANOTHER

- ° Nature of the discussion.
"A Discussion which is sufficiently focused on discrete proposals or issues as to cause or be likely to cause individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency is a meeting - a discussion which is merely exploratory or informational is not.

FACTORS

- ° Were all members present or have opportunity to attend?

THE WHITE HOUSE

WASHINGTON

November 28, 1986

MEMORANDUM FOR PETER J. WALLISON
COUNSEL TO THE PRESIDENT

THROUGH: ARNOLD INTRATER *AI*

FROM: MICHAEL L. WEINSTEIN *mwj*
BARBARA GORDON *BG*

SUBJECT: Impact of the Federal Advisory Committee Act
Upon the President's Special Review Board

This memorandum highlights the important areas of impact that the Federal Advisory Committee Act (FACA), 5 U.S.C. App. I, will have upon the recently announced President's Special Review Board (the Board). Areas focused upon include: FACA's impact on Board meetings, what constitutes a Board meeting, and FACA's impact upon Board documents. The role of the Board's Executive Director is also discussed. Additionally, we have attached pertinent support documents.

Background

The FACA was passed by Congress in 1972 as part of its efforts to more closely scrutinize and control what it viewed as a tremendous increase in the amount of administrative advisory entities chartered solely to develop recommendations to officers, agencies, and departments of the Federal government.

The fundamental requirements that FACA confers upon advisory bodies are (1) to hold open meetings and (2) to make public disclosure of all documents drafted and considered by advisory bodies.

What Constitutes a Board "Meeting?"

The FACA requires that each advisory committee meeting be opened to the public, 5 U.S.C. App. I § 10(a)(1), unless the exemptions of the Sunshine Act apply. Id. § 10(a)(3)(d). The controlling definition of "meeting" for FACA purposes is found in the Sunshine Act and defined as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business." 5 U.S.C. § 552b(a)(2).

There is very little caselaw defining "meeting" under the Sunshine Act, and none under the FACA. The legislative history of the Sunshine Act makes clear that meetings are not "intended to be merely reruns staged for the public after agency members have discussed the issue in private and predetermined their views. The whole decision making process, not merely its results must be exposed to public scrutiny." S. Rep. No. 94-354, 94th Cong., 1st Sess. (1975), at 18.

The Senate Report provided some limits to the definition of "meeting," however, in discussing whether two members constituted a quorum. "It is not the intent of the bill to prevent any two agency members, regardless of agency size, from engaging in informal background discussions which clarify issues and expose varying views." Id., at 19. The controlling distinction is between discussions which effectively predetermine official actions and those which do not.

The authoritative commentators on the Sunshine Act have opined that the proper test is "the nature of the discussion... whether it is sufficiently focused on discrete proposals or issues as to cause or be likely to cause the... members to form reasonably firm positions regarding matters pending...." An Interpretive Guide to the Sunshine Act, Berg and Klitzman, at 9. Thus, briefings, fact-finding missions, and exploratory or tentative discussions would not fall within the definition of meeting. Id. at 7-9.

Further, where members are "merely familiarizing themselves with the subject, exchanging preliminary observations, canvassing possibilities or brainstorming," no meeting is being held for purposes of the Act. Department of Justice Letter to Covered Agencies, April 19, 1977, Appendix E to Berg and Klitzman book cited above. Meetings between individual members and their staff or counsel are not meetings, nor are chance encounters, informal lunches together, or other such occurrences, See C & S Motor Frieght Tariff Assn. v. ICC, Civil No. 83-2618 (D.D.C. Dec. 12, 1983).

Agency members can act on routine business circulated to them in writing without a meeting. Communications Systems, Inc. v. FCC 595 F. 2d 797 (D.C. Cir. 1978). There is no requirement that a meeting be conducted in any manner as long as the requirements of the Sunshine Act and FACA are met. Shewmaker v. Bedell, 1 GDS \$ 80, 175 (D.D.C. 1980). Subdivision meetings of an agency are covered by the Sunshine Act only if the meetings are convened by and subject to the control of the full agency. ITT World Communications, Inc. v. FCC, 466 U.S. 463 (1984).

FACA Impact on Board Meetings

Notwithstanding FACA's broad, general requirement to hold open meetings, such meetings may be properly closed to the public whenever a specific exemption is applicable under the Sunshine Act. 5 U.S.C. 552b(c)(1)-(10). The two pertinent exceptions which may provide a basis for closing meetings of the Board are found at (c)(1) and (c)(9)(B). These exceptions allow for closed meetings if these meetings would

(c)(1): disclose matters that are (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive Order;

(c)(9): disclose information the premature disclosure of which would...

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal.

The caselaw shows that the "premature disclosure" exception (c)(9), is very narrowly construed by the courts. Common Cause v. NRC, 674 F.2d 921 (D.C. Cir. 1982).

Strict procedures must be followed for closing meetings under FACA. See 5 U.S.C. App. I, § 10(a)(3)(d) and GSA regulations interpreting the FACA, 41 C.F.R. § 101-6.1023.

FACA Impact on Board Documents

With regard to public disclosure of documents of the Board, the following important factors should be considered:

° The FACA provides:

Subject to section 552 of Title 5, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

5 U.S.C. App. I, § 10(b).

THIS
IS
NOW
AN OPEN
ISSUE
JUSTICE IS
AIDED
BY THIS
ADVICE

- The above-quoted provision has been interpreted to require an advisory committee to release "drafts, working papers, and other documents that were made available to or prepared by" each advisory committee member. This is so, even though the foregoing material would normally be protected from disclosure under FOIA's Exemption (b) (5).
- The recent litigation involving Public Citizen's claim for copies of such drafts of documents prepared by the Attorney General's Commission on Pornography has substantiated the fact that, absent other bases for preventing disclosure (such as for purposes of national security pursuant to FOIA exemption B(1)), public disclosure of drafts must be made even if such premature disclosure is likely to frustrate an advisory body's prospects of achieving its goals. The Attorney General settled the Pornography Commission litigation by releasing the requested materials.
- Drafts and working papers of the staff of the Board need not be disclosed, however. See National Anti-Hunger Coalition v. President's Private Sector Survey on Cost Control, 557 F. Supp. 524 (D.D.C. 1983), aff'd., 711 F.2d 1071 (D.C. Cir. 1983), on remand, 566 F. Supp. 1515 (D.D.C. 1983).
- FOIA's Exemption 5 protection may apply to deliberative documents generated by Federal agencies that are reviewed by the Board. Aviation Consumer Action Project v. Washburn, 535 F.2d 101, 107-08 (D.C. Cir. 1976).
- FOIA Exemption (B) (1) will apply to Board documents relating to matters that are authorized by Executive Order "to be kept secret in the interest of national defense or foreign policy". Cf. Military Audit Project v. Casey, 656 F.2d 724 (D.C. Cir. 1981).
- It is likely that many documents reviewed by the Board will already have B(1) exemption protection. For those documents reviewed by the Board that do not have a prior classification, it will be necessary to establish a proper classification authority to support Board determinations in this area. Johnathan Miller has such classification authority. The use of his services in this regard comports with the Office of Administration's general provision of all other administrative support to the Board in accordance with its enabling Executive Order and Charter.

Role of the Executive Director

The Executive Director of the Board constitutes the "Federal presence" on this advisory body, serves as the head of the Board staff, and may play a major role in selecting the Board staff. The Executive Director must attend all Board meetings. Should the subject matter of Board meetings stray from the assigned purpose of the Board, the Executive Director is authorized to call a halt to Board proceedings until the deliberative focus returns to established Board objectives. 5 U.S.C. App. I, § 10(e) and (f).

If you have any questions on the substance of this memorandum, its attachments, or any related issues, please contact us at your convenience.

Attachment

THE WHITE HOUSE
WASHINGTON

December 1, 1986

MEMORANDUM FOR PETER J. WALLISON
COUNSEL TO THE PRESIDENT

FROM: ARNOLD INTRATER AI

SUBJECT: First-class Travel for
Special Review Board Members

This is to confirm the oral advice that I gave you on Friday that members of the President's Special Review Board are bound by standard Federal travel regulations.

Section 7(d)(1)(B) of the Federal Advisory Committee Act authorizing the payment of travel and per diem expenses of committee members "as authorized by Section 5703 of Title 5 U.S.C. for persons employed intermittently in government service."

Federal employees travelling on official business, including individuals travelling pursuant to the authority of 5 U.S.C. § 5703, are governed by the Federal Travel Regulations issued by the General Services Administration. These regulations provide that ordinarily a Federal traveller is not authorized first-class transportation except under the following circumstances:

- (i) Space is not available in less-than-first-class accommodations on any scheduled flight in time to accomplish the purpose of the official travel, which is so urgent that it cannot be postponed;
- (ii) First-class accommodations are necessary because the employee is so handicapped or otherwise physically impaired that other accommodations cannot be used, and this condition is substantiated by competent medical authority;
- (iii) First-class accommodations are required for security purposes or because exceptional circumstances, as determined by the agency head (or his/her designee), make their use essential to the successful performance of an agency mission;
- (iv) Less-than-first-class accommodations on foreign carriers do not provide adequate sanitation or health standards; or

- (v) The use of first-class accommodations would result in an overall savings to the Government based on economic considerations, such as the avoidance of additional subsistence costs, overtime, or lost productive time that would be incurred while awaiting availability of less-than-first-class accommodations.

There is some flexibility built into exceptions (iii) and (v) which may allow for more extensive use of first-class travel. I know of no examples of the use of the "exceptional circumstances" exception (iii). Exception (v) has been used to my knowledge in situations where an official needs room to spread out papers he or she is working on.

To the extent that the Chairman of the Review Board or the other members are carrying around classified documents, we could argue that the security of these documents is improved by having the official use first-class transportation. To be consistent, however, we may have to provide first-class transportation for all members of the Board each time they travel.

As with any exception that appears to give the user a benefit, use of these exceptions may subject the Board to criticism. This seems to be especially true of Boards and Commissions which are charged with the responsibility of reviewing the conduct of others.

Attachments

cc: Jay B. Stephens



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503

December 2, 1986

MEMORANDUM FOR JOHNATHAN MILLER
DEPUTY ASSISTANT TO THE PRESIDENT FOR
ADMINISTRATION AND DIRECTOR, OFFICE OF
ADMINISTRATION

FROM: ARNOLD INTRATER *AI*

SUBJECT: Transmittal Letter for
President's Special Review Board Charter

Appended to this memorandum is a transmittal letter from you to Terry Golden seeking GSA's approval of the Charter for the President's Special Review Board pursuant to § 9(c) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. I. The Charter is attached to the transmittal letter.

We will send the package via messenger to GSA's top FACA official, Charles Howton, who has assured us that he will expedite its approval through Terry. I have also spoken several times with Paul Trause who has offered similar assurance of "same day" service. I will keep you apprised of the Charter's approval status.

These charters generally follow a standard format with very little left to individual choice. However, please note that in section 8 we have deliberately not specified either the number or frequency of Board meetings in an effort to grant latitude for these matters to be determined "as necessary at the direction of the Chairman." The FACA asks that we specify this information but, in my opinion, this language comports with statutory requirements.

Attachments

THE WHITE HOUSE

WASHINGTON

December 2, 1986

Dear Mr. Golden:

Attached to this transmittal letter, pursuant to § 9(c) of the Federal Advisory Committee Act (5 U.S.C. App. I), is the Charter for the President's Special Review Board. Your expeditious processing of the Charter is greatly appreciated.

Sincerely,

Johnathan S. Miller
Deputy Assistant to the
President and Director,
Office of Administration

Terence Golden
Administrator
General Services Administration
Room 6137
18th and F Streets, N.W.
Washington, D.C. 20405

Attachment

PRESIDENT'S SPECIAL REVIEW BOARD

CHARTER

Section 1. Official Designation.

The official designation of this Board shall be the President's Special Review Board, as established by Executive Order No. 12575, dated December 1, 1986.

Section 2. Membership.

The Board shall be composed of three (3) members appointed by the President. These members shall have extensive experience in foreign policy and national security affairs.

The President shall designate a Chairman from among the members of the Board.

Section 3. Objective, Scope of Activities, and Duties.

The Board shall conduct a comprehensive study of the future role and procedures of the National Security Council (NSC) staff in the development, coordination, oversight and conduct of foreign and national security policy; review the NSC staff's proper role in operational activities, especially extremely sensitive diplomatic, military and intelligence missions; and review the manner in which foreign and national security policies established by the President have been implemented by the NSC staff.

Section 4. Official to Whom the Board Reports.

The Board shall report its findings and recommendations to the President.

Section 5. Support Services.

The heads of Executive Agencies shall, to the extent permitted by law, provide the Board with such information as it may require for the purpose of carrying out its functions. Information supplied to or developed by the Board shall not, to the extent permitted by law, be available for public inspection.

The Office of Administration, Executive Office of the President, shall provide the Board with such administrative services, facilities, staff and other support services as may be necessary for the performance of its functions. Expenses of the Board shall be paid from funds available for expenses of the Office of Administration, Executive Office of the President.

Section 6. Federal Advisory Committee Act.

Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Board, shall be performed by the Director of the Office of Administration, Executive Office of the President.

Section 7. Estimated Costs.

Members of the Board shall receive compensation for their work on the Board at the daily rate specified for GS-18 of the General Schedule. While engaged in the work of the Board, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

The estimated annual cost for operating the Board, including travel expenses and per diem in lieu of subsistence, is \$200,000 and four (4) person-years of staff time.

Section 8. Meetings and Termination Date.

The Board will meet as necessary at the direction of the Chairman.

The Board will report to the President not later than January 29, 1987; the Board shall terminate thirty days thereafter, unless sooner extended.

FILED this 2nd day of December, 1986.

THE WHITE HOUSE

WASHINGTON

July 22, 1987

MEMORANDUM FOR JAY STEPHENS

FROM: DIANNA HOLLAND *dh*

Following is a status report on the AIDS Commission.

Regular name checks (not expanded) have been done on the following:

Colleen Conway-Welch
John J. Creedon
Theresa L. Crenshaw
Richard M. DeVos
Burton J. Lee III
Frank Lilly
William Mayberry
Woodrow A. Myers, Jr.
Penny Pullen
Cory Servaas

We will be getting the name check information on William B. Walsh tomorrow, Thursday, July 23.

We have not run name checks on James D. Watkins or John Cardinal O'Connor. We do have a name check from November of 1985 on John Cardinal O'Connor; and as I mentioned, when his name was put forward for Private Sector Initiatives, it was requested that he not have to fill out a Personal Data Statement and that was approved by this office.

THE WHITE HOUSE

WASHINGTON

July 17, 1987

MEMORANDUM FOR ANTHONY R. DOLAN
DEPUTY ASSISTANT TO THE PRESIDENT AND
DIRECTOR OF SPEECHWRITING

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

Original Signed by ABC

SUBJECT: Presidential Remarks: National Institute
of Health Panel Discussion on AIDS

Counsel's office has reviewed the above-referenced remarks and, subject to the following comment, has no objection to them from a legal perspective.

The President refers to his recent call for certain kinds of testing in making an appeal to end ignorance about the disease. The sentence containing this reference is a brief and general one, but I question whether any reference to testing does more good than harm. As witnessed by the President's May 31 speech at the AIDS research awards dinner, comments by the President on testing evoke considerable controversy and dominate media coverage, thereby obscuring the many positive and widely-supported features of the President's program.

Attachment

cc: ✓ Rhett B. Dawson

3 items from
Bob K.

THE WHITE HOUSE

WASHINGTON

May 29, 1987

MEMORANDUM FOR ARTHUR B. CULVAHOUSE, JR.

FROM: PETER D. KEISLER *PK*

SUBJECT: Proposed Executive Order: "Presidential Commission on the Human Immunodeficiency Virus Epidemic"

OMB has circulated the proposed Executive Order establishing a Presidential Commission on AIDS. It is on an extremely fast track. Bob Kruger and I reviewed an "advance copy" yesterday, and this memorandum reflects his views.

The Order establishes the Commission under the Federal Advisory Committee Act to investigate the spread of the HIV virus and AIDS. It provides that the Commission shall be composed of seven members appointed or designated by the President. The Order states that the members "shall be distinguished individuals who have extensive experience in the fields of medicine, epidemiology, virology, law and medicine, public health and related disciplines." We recommend that this provision be reconsidered in connection with any consideration of prospective members that has already taken place. Membership on the Commission is likely to be a hot political issue (see attached article) and the Administration may wish to allow itself maximum flexibility in the selection of the members. Rather than limit ourselves to persons with experience in legal and medical disciplines, we may wish to adopt more open-ended qualifications.

Under the Order, the functions of the Commission include advising the President and the Secretary of HHS on long-range planning to deal with the public health danger and social and economic impact of AIDS, recommending measures for federal, state and local action in the areas of prevention, treatment and cure, evaluating ongoing efforts to combat AIDS, conducting various research efforts, examining drug and vaccine policy and monitoring the progression of the disease.

The Order provides that the Commission shall report to the President from time to time and submit its final report no later than one year after the date of the Order.

The Order provides that members of the Commission serve without compensation but may receive travel expenses and a per diem

allowance. Under the Order, HHS is to provide support and administrative services and funds for the Commission's operations.

The attached memorandum to Rhett Dawson, submitted for your review and signature, incorporates the one recommendation noted above.

There is one other issue of interest. The White House Office is not subject to the Freedom of Information Act, and its records are Presidential Records. There has always been some ambiguity over whether Presidential Commissions partake of that same exemption. We have never adopted a general policy on this issue, and it has been handled ad hoc, as FOIA requests come in. In my view, where the Commission in question has no operational responsibility and is purely advisory, as this one is, it seems advisable to include it within the White House for these purposes. Paul Stevens strongly shares this position.

Bob, Arnold Intrater and I discussed this issue yesterday. We considered certain possible revisions in the Executive Order which might tighten the case for later declaring the Commission records to be Presidential records. Specifically, we suggested stating that the Commission was established "in the White House" and that it would report to the President alone, and not to the Secretary of HHS.

After meeting with John Cooney, we determined this to be impractical. Establishing the Commission within the White House and severing the reporting requirement to HHS would render it impossible for HHS to provide the funding.

Accordingly, if we wish to protect Commission records, we have to be willing to pay a price (literally). Given the funding problem, the political sensitivity of this specific Commission, the absence of any special reason to protect these records in particular from disclosure, and the need to issue this Executive Order with haste, we decided not to recommend the initiation of a new policy on Commission records on this particular occasion. We may still wish to assert, when requests are made, that the AIDS Commission is not subject to FOIA, but we will be able to draw less support from the Executive Order in defending that determination than would otherwise be the case.

Attachment

cc: Arnold Intrater
Robert M. Kruger

Of Homosexuals From AIDS Panel

Letter to Reagan Urges Rethinking of Commission's Composition

By Michael Specter
Washington Post Staff Writer

The Reagan administration's decision not to appoint an openly gay person to the president's new AIDS commission has drawn a sharp protest from several of the nation's leading AIDS researchers.

"If this panel, designed to guide the country through a terrible plague, starts out by excluding the group that has borne its brunt, it would be a disgrace," said Dr. Paul Volberding, director of AIDS activities at San Francisco General Hospital. "It's certainly something that would be a waste of my time."

Volberding is one of several experts on acquired immune deficiency syndrome who have written to President Reagan to express "alarm" over the administration decision. Others who signed the letter include: Harvey Fineberg, dean of the Harvard School of Public Health; Dr. David Baltimore, a Nobel-winning biologist who led the National Academy of Sciences (NAS) report on AIDS; Dr. Michael Gottlieb, a leading AIDS researcher at UCLA; June Osborn, dean of the University of Michigan School of Public Health, and representatives from the American Red Cross and the American Public Health Association.

Several of those who signed the letter, which Osborn said would be delivered to the White House today, indicated they would not participate on a panel that did not include gays.

Of nearly 35,000 Americans diagnosed with AIDS since 1981, more than 70 percent are either homosexual or bisexual males, according to federal statistics. In most cities, gay organizations have led the fight against the disease.

The letter comes as a response to administration indications over the past week that the commission, recommended last year by the NAS, would not have among its members someone appointed only because he was gay.

"This administration has opposed in the past appointing people to jobs or giving them assignments solely because of race or sex," said Gary L. Bauer, a domestic policy adviser to the president. "I just don't know how one can philosophically believe that and then turn around and appoint somebody based on sexual preference."

The letter, however, said that while it affects all Americans, it is principally gays that have been "forced to deal with the harsh realities of AIDS. They have provided extraordinary leadership . . . they have taught us a great deal and we have much more to learn from them."

"You have the opportunity in empanelling this commission to give hope to the hundreds of thousands, possibly millions of Americans acutely threatened by AIDS, and to give solace to the families and friends of the tens of thousands of those victims it has already claimed."

In addition to deciding on the composition of the administration panel this week, Reagan will meet with the Domestic Policy Council today in preparation for a major speech he will give Sunday night at a fund-raising dinner sponsored by the American Foundation for AIDS Research.

Administration sources said Reagan is expected to urge states to initiate routine AIDS testing for federal prisoners, hospital patients and immigrants.

Reagan's Domestic Policy Council met yesterday to discuss AIDS policy, and sources said there was a growing consensus that wider AIDS testing would become necessary in the coming months.

One source said the council will urge Reagan to recommend a large national survey to assess more precisely how many Americans have been infected by the AIDS virus.

More than 1.5 million Americans are believed to have been infected, but those figures are based on preliminary data. About 50 percent of those infected with the virus eventually develop symptoms of the disease, according to recent estimates.

"The administration is urging mandatory testing and other measures that make no sense at all," said Osborn, an instigator of the letter. "And they are turning away from those who can advise them best. This commission has to be as well constituted in training as any commission ever has been."

The scope of the commission has been a matter of strong debate within the administration. The NAS report recommended creating a panel that would guide federal, local and private efforts to combat the disease and the creation of a office

within the Department of Health and Human Services.

But the White House has trimmed that back considerably.

"I want to make sure the president is getting all the information he can get," Bauer said yesterday. "But policy on AIDS will continue to be made in the Domestic Policy Council."

He said the panel would be composed of about 10 members, and would be able to provide information and expertise on a large range of AIDS-associated issues.

Gay leaders have reacted with outrage to the suggestion that they may not have a visible role on the panel.

"It would be an utter waste if the president chooses to ignore our experience, our creativity, our resources and our desire to see an end to this epidemic," said Tim Sweeney, deputy director of New York's Gay Men's Health Crisis, the nation's most influential AIDS care agency. "Over the next five years, tens of thousands of gays will die from AIDS. We have earned a right to be part of any commission that will recommend policy affecting our lives."

WHO Opens AIDS Campaign As Case Count Tops 50,000

Reuter

GENEVA, May 27—The World Health Organization today launched a worldwide AIDS prevention program as its official count of cases topped 50,000 for the first time.

The campaign, introduced with a poster of a death's head imposed on two overlapping hearts, aims to stop the AIDS epidemic through public information, said program chief Jonathan Mann.

"AIDS can be stopped even without a vaccine," Mann said.

The campaign was announced as the official WHO count of cases of acquired immune deficiency syndrome in 112 nations rose to 51,069.

WHO said that because many cases are not reported, the real number of AIDS cases worldwide is probably more than 100,000. It said that about 10 million people have been infected with the virus but have not developed the disease.

W. Post 5/28

N

THE WHITE HOUSE

WASHINGTON

May 29, 1987

MEMORANDUM FOR RHETT B. DAWSON
ASSISTANT TO THE PRESIDENT
FOR OPERATIONS

FROM: ARTHUR B. CULVAHOUSE, JR.
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order: "Presidential
Commission on the Human Immunodeficiency
Virus Epidemic"

As requested, Counsel's office has reviewed the above-referenced Executive Order. We have one comment.

The Order states that the members of the Commission "shall be distinguished individuals who have extensive experience in the fields of medicine, epidemiology, virology, law and medicine, public health and related disciplines."

We recommend that this provision be reconsidered in connection with any consideration of prospective members that has already taken place. Membership on the Commission is likely to be a hot political issue and the Administration may wish to allow itself maximum flexibility in the selection of the members. Rather than limit ourselves to persons with experience in legal and medical disciplines, we may wish to adopt more open-ended qualifications.

Thank you for bringing this matter to our attention.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1/1



Name of Correspondent: Rhett Dawson

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Executive Order: Presidential Commission on AIDS

ROUTE TO:	ACTION	DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response Code	Completion Date YY/MM/DD
<u>cuhall</u>	ORIGINATOR	87105128		1/1
	Referral Note:			
<u>cuat 31</u>	D	87105128	S	87105129 noon
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| <p>ACTION CODES:</p> <ul style="list-style-type: none"> A - Appropriate Action C - Comment/Recommendation D - Draft Response F - Furnish Fact Sheet to be used as Enclosure | <ul style="list-style-type: none"> I - Info Copy Only/No Action Necessary R - Direct Reply w/Copy S - For Signature X - Interim Reply | <p>DISPOSITION CODES:</p> <ul style="list-style-type: none"> A - Answered B - Non-Special Referral C - Completed S - Suspended |
|--|---|---|
- FOR OUTGOING CORRESPONDENCE:**
 Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 5/28/87 ACTION/CONCURRENCE/COMMENT DUE BY: NOON on 5/29/87

SUBJECT: EXECUTIVE ORDER -- PRESIDENTIAL COMMISSION ON AIDS

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	FITZWATER	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRISCOM	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HENKEL	<input type="checkbox"/>	<input type="checkbox"/>
MILLER - OMB	<input type="checkbox"/>	<input type="checkbox"/>	HOBBS	<input type="checkbox"/>	<input type="checkbox"/>
BALL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	KING	<input type="checkbox"/>	<input type="checkbox"/>
BAUER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MASENG	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CARLUCCI	<input type="checkbox"/>	<input type="checkbox"/>	RISQUE	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CRIBB	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
CRIPPEN	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
CULVAHOUSE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
DAWSON	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	<u>CLERK</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DONATELLI	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>GRAHAM</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please provide any comments/recommendations directly to my office by noon on Friday, May 29th. The Justice Department is currently reviewing the order. Thanks.

RESPONSE:



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT

FROM: James C. Miller III
Director

SUBJECT: Proposed Executive Order Entitled "Presidential
Commission on the Human Immunodeficiency Virus
Epidemic"

SUMMARY: This memorandum forwards for your consideration a proposed Executive order, submitted by the Office of Policy Development, that would implement your decision to establish an advisory commission to study the impact of the human immunodeficiency virus (HIV) epidemic and the related acquired immune deficiency syndrome (AIDS).

BACKGROUND: The proposed Executive order would exercise your authority under the Federal Advisory Committee Act to establish a Presidential advisory commission to investigate the spread of the HIV virus and the resultant AIDS. The Commission would consist of seven members to be appointed or designated by you.

Under the proposed order, the Commission would advise you and the Secretary of Health and Human Services on long-range planning to deal with the public health dangers resulting from the spread of the HIV virus and AIDS. The Commission would submit its final report to you and the Secretary of HHS within one year. Support services for the Commission would be provided from appropriations available to the Office of the Secretary of HHS.

Time has not permitted an opportunity for complete coordination of the views of the affected agencies. From the comments submitted, I am aware of no objections that argue against issuance of the proposed Executive order.

RECOMMENDATION: I recommend that you sign the proposed Executive order.

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 28 1987

Honorable Edwin Meese, III
United States Attorney General
Washington, D.C. 20530

Dear Mr. Attorney General:

Enclosed, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Presidential Commission on the Human Immunodeficiency Virus Epidemic" that would implement the President's decision to establish an advisory commission to study the impact of the human immunodeficiency virus (HIV) epidemic and the related acquired immune deficiency syndrome (AIDS).

The proposed Executive order would exercise the President's authority under the Federal Advisory Committee Act to establish a Presidential advisory commission to investigate the spread of the HIV virus and the resultant AIDS. The Commission would consist of seven members to be appointed or designated by the President.

Under the proposed order, the Commission would advise the President and the Secretary of Health and Human Services on long-range planning to deal with the public health dangers resulting from the spread of the HIV virus and AIDS. The Commission would submit its final report to the President and the Secretary of HHS within one year. Support services for the Commission would be provided from appropriations available to the Office of the Secretary of HHS.

Your staff may direct any questions concerning this proposed Executive order to Mr. John F. Cooney of this office (395-5600).

This proposed Executive order has the approval of the Director of the Office of Management and Budget.

Sincerely,

A handwritten signature in cursive script, appearing to read "John H. Carley".

John H. Carley
General Counsel

EXECUTIVE ORDER

PRESIDENTIAL COMMISSION ON THE
HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to create an advisory commission to investigate the spread of the human immunodeficiency virus (HIV) and the resultant acquired immune deficiency syndrome (AIDS) in the United States, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Presidential Commission on the Human Immunodeficiency Virus Epidemic to investigate the spread of the HIV virus and the resultant AIDS. The Commission shall be composed of seven members appointed or designated by the President. The members shall be distinguished individuals who have extensive experience in the fields of medicine, epidemiology, virology, law and medicine, public health and related disciplines.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall advise the President and the Secretary of Health and Human Services on long-range planning to deal with the public health dangers including the medical, legal, ethical, social, and economic impact, from the spread of the HIV virus and resulting illnesses including AIDS, AIDS-related complex, and other related conditions.

(b) The primary focus of the Commission shall be to recommend measures that Federal, State, and local officials can take to (1) protect the public from contracting the HIV virus; (2) assist in finding a cure for AIDS; and (3) care for those who already have the disease.

(c) In particular, the Commission shall (1) evaluate efforts by educational institutions and other public and private entities to provide education and information concerning AIDS; (2) analyze the efforts currently underway by State and local authorities to combat AIDS; (3) examine long-term impact of AIDS treatment needs on the health care delivery system, including the effect on non-AIDS patients in need of medical care; (4) review the United States history of dealing with communicable disease epidemics; (5) identify future areas of research that might be needed to address the AIDS epidemic; (6) examine policies for development and release of drugs and vaccines to combat AIDS; (7) monitor the progression of AIDS among the general population and among specific risk groups; (8) evaluate research activities relating to the prevention and treatment of AIDS; and (9) study legal and ethical issues relating to AIDS.

(d) The Commission shall report to the President and the Secretary of Health and Human Services from time to time as appropriate and shall submit its final report no later than one year from the date of this Order.

Sec. 3. Administration. (a) The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Commission, upon request, with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without additional compensation for their work on the Commission. While engaged in the work of the Commission, members appointed from among private citizens of the United States may, to the extent funds are available, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) The Office of the Secretary of Health and Human Services shall, subject to the availability of appropriations, provide the Commission with such administrative services, funds,

facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. General Provisions. (a) The functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 1), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of Health and Human Services, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall, unless sooner extended, terminate 30 days after submitting its final report to the President.

THE WHITE HOUSE,

THE WHITE HOUSE

WASHINGTON

June 22, 1987

MEMORANDUM FOR JAY B. STEPHENS

FROM: ARNOLD INTRATER *AI*

SUBJECT: Revised Executive Order on AIDS

We have been requested to review some pen and ink changes to the proposed Executive Order on AIDS. Bob Kruger, Peter Keisler and I had reviewed the previous version and recommended that it be signed. Bob drafted a memorandum for A.B.'s signature which suggested that the reference to the qualification of the Commission members be as open ended as possible. Peter sent A.B. a follow up memorandum which focused on a Freedom of Information Act issue. We had considered having the Commission report only to the President, but John Cooney convinced us that without a reference to HHS we would have to fund the Commission out of an appropriation controlled by the President. We concluded that no White House funds were available and that HHS was the most appropriate source of funding (previous memoranda attached).

The major revision contained in the present draft calls for the elimination of the requirement that the Commission report to HHS. (At some stage someone included a requirement that the Commission also advise other agency heads.)

I spoke to Gary Bauer about this change. The basic reason is a practical one - retention of more control over the Commission by the White House. When I explained the funding issues to him, he accepted the fact that funding was the more significant problem and that he did not think we could afford to use White House funds to support the Commission. Gary is prepared to work very closely with HHS on the staffing issues.

I think the revised language constitutes an accommodation which can work. As modified, the Executive Order does not require the Commission to furnish its report directly to HHS. Similar language was contained in Executive Order 12433 (copy attached) establishing the National Bipartisan Commission on Central America. In that case the State Department became the support agency even though the Executive Order did not contain a requirement that the Commission submit a contemporaneous report to the State Department. The rest of the changes in the Executive Order are acceptable.

Two other issues need to be noted. The Federal Advisory Committee Act (the Act) authorizes payment at a GS-18 level for Commission members. The Executive Order specifies that they shall receive no compensation. I assume that payment of compensation was determined to be unnecessary.

More importantly, there is evidence in the press accounts about the Executive Order that gay groups may challenge the make up of the Commission unless someone representing their interest is appointed. The Act provides at 5 U.S.C. (b) (2) in conjunction with 5 U.S.C. (c) that membership on a advisory committee be "fairly balanced in terms of the points of view represented and the functions to be performed by the committee." I believe implementation of the Executive Order is susceptible to challenge if no one is appointed who can be characterized as "representing" the point of view of the gay community.

OMB has already alerted the Justice Department about the likelihood of a suit. No one has successfully challenged an advisory committee on these grounds. Careful selection of the eleven members may make the critical difference here.

Attachments

cc: Robert M. Kruger
Peter D. Keisler

THE WHITE HOUSE

WASHINGTON

June 22, 1987

MEMORANDUM FOR RHETT B. DAWSON

FROM: JAY B. STEPHENS

SUBJECT: Revised Executive Order on AIDS

We have reviewed the revised Executive Order on AIDS and recommend that the Executive Order be further revised before presenting it to the President for signature.

Section 2 of the Order as circulated for comment eliminates the clause from section (a) which would have required the Commission to advise not only the President, but also the "Secretary of Health and Human Services, and the heads of other Cabinet agencies". A conforming revision is made in section 2 (d), eliminating the requirement that preliminary and final reports be filed with the Secretary of the Department of Health and Human Services.

At the same time section 3 and 4 of the Order provide that the Office of the Secretary of Health and Human Services and the Secretary will provide the administrative services and funds required to support the work of the AIDS Commission.

Unless there is evidence in the Executive Order that the Department of Health and Human Services (HHS) benefits directly from the work of the Commission, there is a serious question whether as a matter of law that Department can use its appropriated funds to support the cost of the Commission. It is our view that without some reference to HHS, or to some other relevant Department, the cost of the Commission will have to be borne by an appropriation within the Executive Office of the President.

We believe that the Executive Order can be revised in such a manner as to authorize the funding by HHS without the need for the Commission Report to be furnished directly or contemporaneously to HHS. This can be done by leaving the reference to HHS (not to the other cabinet agencies) in section 2(a), but eliminating the reference to HHS in section 2(d). With these changes, the Executive Order will provide that the Commission is to advise both the President and HHS, but need only

submit the report initially to the President. The function of advising HHS is sufficient to authorize the expenditure of HHS funds in support of the Commission.

We have no comment on the other changes that were made on the Executive Order. If the Order is revised as we have suggested we recommend that it be forwarded to the President for signature.